

Spring 1949

The Legacy of Sacco and Vanzetti, by G. Louis Joughin and Edmund M. Morgan

Hugh M. Davidson
University of Chicago

Monrad G. Paulsen
Indiana University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Criminal Law Commons](#)

Recommended Citation

Davidson, Hugh M. and Paulsen, Monrad G. (1949) "The Legacy of Sacco and Vanzetti, by G. Louis Joughin and Edmund M. Morgan," *Indiana Law Journal*: Vol. 24: Iss. 3, Article 22.

Available at: <http://www.repository.law.indiana.edu/ilj/vol24/iss3/22>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

THE LEGACY OF SACCO AND VANZETTI. By G. Louis Joughin and Edmund M. Morgan.* New York: Harcourt, Brace and Company, 1948. Pp. xvii, 598. \$6.00.

In writing a review of Osmond K. Fraenkel's *The Sacco-Vanzetti Case*, the late Morris Cohen expressed the hope that "someone will write a careful history of the human side of the whole case, of all that went on behind the scene and caused the various changes of public, newspaper, and official opinion."¹ Professors Joughin and Morgan have undertaken the task suggested and by reappraising, in addition, the evidence and the story of the trial, have produced an exhaustive work on the most controversial criminal prosecution in American history.

The Sacco-Vanzetti episode really involves two criminal cases. Vanzetti was accused of attempting to rob a payroll in Bridgewater, Massachusetts on December 24, 1919. For this Vanzetti alone was tried and on July 1, 1920 was convicted in Plymouth, Massachusetts. Later Sacco and Vanzetti were tried together in Dedham for a different payroll robbery and two murders incidental thereto. As to the Plymouth trial of Vanzetti Professor Morgan concludes that, apart from a rather stiff penalty, "at the close of the Plymouth trial the people of the Commonwealth of Massachusetts had no apparent cause for dissatisfaction with the verdict."² Not so with the joint trial at Dedham. A careful study of the proceedings there "compels the conviction . . . that these defendants were the victims of a tragic miscarriage of justice."³

Morgan does not say that the accused pair were in fact innocent. Indeed, "on the record as it stands . . . there was

* The present volume represents an unusual scholarly collaboration between a student of literature, Professor G. Louis Joughin of the New School for Social Research, and a lawyer, Professor Edmund M. Morgan of the Harvard Law School. The over-all plan of the book is a creation of Professor Joughin. He has been principally responsible for that section of the book concerning the history of the case and its aftermath as well as for the material on the relationship of the Sacco-Vanzetti case to American literature. Professor Morgan makes a re-evaluation of the case as a criminal trial. An introduction is contributed by Arthur M. Schlesinger.

1. COHEN, THE FAITH OF A LIBERAL 198 (1946).
2. P. 159.
3. P. 157.

evidence to support the verdict."⁴ His conclusion as to the Dedham trial rests upon the outrageous way in which the case was tried. An overreaching prosecutor, devoid of any conception of fair play toward the accused, distorted expert ballistics testimony. The most vital issue, whether one of the fatal bullets had been fired from Sacco's gun, was so poorly presented by both prosecution and defense that the jurors could not possibly have arrived at an intelligent resolution of the question. The trial judge permitted the prosecutor to go far beyond proper bounds in his cross examination of Sacco concerning the latter's radical anarchist views. Prejudice on the part of the judge is manifest from his utterances out of court and from his rulings both during the trial and on the successive motions for a new trial.

In Professor Morgan's view the legacy of the Sacco-Vanzetti case to the law is to epitomize certain defects in the machinery of American criminal procedure. He insists that a fair trial cannot be assured in any criminal proceeding without full disclosure to the defendant of the state's case in advance of trial together with a presentation of the case by the prosecution free from appeal to passion or prejudice. Further, the court itself must have the right to call expert witnesses. The accused should be given the privilege of trial by judge where local feeling makes it difficult to obtain a jury free from bias.

Unqualified as it is, Professor Morgan's latter suggestion oversimplifies a difficult problem. He posits a situation in which local feeling is so intense that only a judge clothed with the dignity and tradition of his office would be at all likely to render a fair judgment. Perhaps in such cases the right of trial by judge is helpful to a defendant.⁵ Yet Morgan does not take into account other situations in which the right of an accused to trial by judge unfairly puts the state to enormous disadvantage. For example, crimes committed in public office by the members of successful political machines may go unpunished if defendants can be tried

4. P. 94.

5. Even this point is debatable. Will judges, elected officials in most states, be more likely than a jury to adjudicate impartially when a defendant belongs to a politically unpopular minority. Judge

by a friendly local judge. In such cases the right of the state to trial by jury is an imperative.⁶

Whatever the implications for the student of criminal procedure, the Sacco-Vanzetti case has been a persistent theme in American literature since the time of the trial. American intellectuals, in a literature of social protest, have roundly condemned the conduct of the case by the Commonwealth of Massachusetts. It is this legacy to literature which Professor Joughin explores in Part III.

The first thing to be said here is that he has produced a sort of catalogue, an annotated list of the literary works—legal and journalistic records, novels, plays, and poetry—which have dealt directly or indirectly with the case. However, Joughin's aims go beyond mere listing. He wishes to illuminate his materials with a two-fold light: they are examples of a type of social criticism—all the more valuable because the "literary man" is by nature a particularly sensitive observer—and they are creations embodying artistic values. The criteria applied will shift, Joughin implies, as he shows the former or the latter aspect to the reader. It is here in his formulation and application of criteria that the difficulties begin. For Joughin does not, in the first place, state his distinction in language which is really precise; and, in the second place, he allows the side of "social criticism" to overshadow or even, on occasion, to regulate the estimation of "artistic worth."

Professor Joughin outlines the critical equipment with which he intends to assay the worth of the Sacco-Vanzetti literature thus:

In order to avoid a complete lack of discrimination—which would necessitate our plowing through everything written on the case—three broad categories are here set up. These should be of some help: (1) writings which have numerous excellent qualities according to the criteria of any established type of

Thayer, as well as the Sacco-Vanzetti jurors, reflected the social atmosphere of the early twenties in Massachusetts.

6. At least one case denying a defendant the right to trial by judge seems to have been decided against a background of political necessity in Illinois. See *People v. Scornavache*, 347 Ill. 403, 179 N. E. 909 (1931). The case and its background is discussed in Hall, *Has The State a Right To Trial by Jury In Criminal Cases*, 18 A. B. A. J. 226 (1932).

critical approach, (2) writings which have at least one good quality by the same criteria, (3) writings which appear to have no merit by any standard of judgment. In other words: very good literature, the middle ground, and the hopelessly bad.⁷

After this beginning it is not surprising that Joughin, when faced with particular works, gives the impression of a man improvising and making judgments more or less *ad hoc*; and there is a corresponding loss of the intelligibility and persuasiveness which characterize more coherent writing. Among the examples that might be cited as a cause for dissatisfaction with Joughin's artistic evaluation are these three bits from the chapter on verse:

1. (apropos of Witter Bynner's sonnet, *The Condemned*) The use of the Petrarchan form and the solemnity of the diction remove the sonnet from the hysteria which so widely prevailed.⁸
2. (apropos of Countee Cullen's sonnet, *Not Sacco and Vanzetti*) But it must be admitted that these verses, and some of the other sonnets, are disappointing in their brevity. There is so much to be said, and so little space is given. The fourteen-line restriction does not seem to offer enough room for the narrative content, the characterization of the attending social mood, and the poets own imaginative judgment.⁹
3. (apropos of Edna St. Vincent Millay's *Two Sonnets in Memory*) These two sonnets are typical of the verse which irritated the masculine activists; they are felt to be marked by sentimentality, masochism and negativism.¹⁰

These samples, brief as they are, exhibit both the lack of precision and the mingling of criteria noted above. In particular, specimen number (2) indicates to what extent Joughin can allow artistic judgments to be affected by matters which many would find extraneous. He all but banishes the sonnet from the field of Sacco-Vanzetti literature because it cannot encompass the range of topics which he deems appropriate.

But why not state frankly that Joughin, in spite of his

7. P. 376.

8. P. 385.

9. *Ibid.*

10. P. 386.

programmatically, is more interested in the literature about the case as "social criticism" than as creations to be judged on aesthetic terms? Insistence upon niceties of method are likely to appear misguided and niggardly, especially to those who, like Joughin, have explored in great detail the legal and social aspects of the trials. Let us then examine the legacy of Sacco and Vanzetti to literature according to the mode of judgment which is in fact preferred by the author.

Of all the novels which he mentions, Joughin deals most elaborately with Upton Sinclair's *Boston*. A two-page resumé of the action, with incidental character sketches, is followed by six pages of judgment and appreciation, a technique typical of the Joughin approach. Sinclair's remark, made in his preface, to the effect that his account "contains no errors of any real significance" is recalled and Joughin undertakes to test the accuracy of the claim. He concludes that Sinclair's version of the Sacco-Vanzetti affair "is accurate in detail to the degree that one would expect in a scientific study, and it has the qualities of proportion in its judgments which indicate careful thinking."¹¹ Joughin continues with a list of details accurately reported by Sinclair, and a review of instances where the facts or judgments of the novelist require correction or qualification. There is, finally, an estimate of the influence which Sinclair's theories about the defects in capitalist civilization and the remedies thereof may have had on the structure of the novel. In one sense this particular critique is not typical, in that only a few works are as intimately concerned with the Sacco-Vanzetti case as *Boston* and therefore lend themselves to so full a treatment. In another sense it is genuinely representative, for it reveals the range of critical insights which Joughin brings to bear, with varying emphases, on the poems, plays and novels in question. A summary of the plot or a resumé of the thought; a list of details relevant to Sacco and Vanzetti; an appraisal of the poet's or dramatist's or novelist's knowledge of the case; a brief analysis of artistic technique—such are the ingredients which Joughin combines in the accounts given of all works worthy of more than a passing note.

The recipe is excellent for an annotated catalogue and a reference book. This aspect of the work deserves the com-

11. P. 448.

commendation of anyone who appreciates the immense effort which underlies such bibliographical research and the gratitude of those who seek a reliable guide in weighing and analyzing the impact of Sacco and Vanzetti on works of the imagination. Yet the Joughin approach is unsatisfactory as a commentary on the artistic and social aspects of the materials. The works themselves—even when considered as rhetorical pieces making points about society—are less interesting to Joughin than the answers to the questions: What has the author said about the Sacco-Vanzetti case? How well-established or reasonable are his facts or interpretations? What is intended to be a discussion of the works is always in danger of slipping into an exchange between Joughin and some author on what was or was not true of the trials and of public reaction to them.

In two chapters of Part III Professor Joughin has given us character sketches of the two men and an extended analysis of *The Mind and Thought of Vanzetti*. Here Joughin's grasp of the tangled facts and facets of the case shows to particular advantage. It is doubtful whether anyone else could have written of the executed men with more sympathy and understanding.

The case was bitterly debated throughout the world. During the years when the defendants were fighting for their freedom and thereafter, hundreds of individuals and groups expressed themselves on the justice of the cause.¹² The history of this debate, which is the substance of Part II, reveals a fierce antagonism between those who are committed to the democratic spirit and those who are not; a fight which, as Joughin points out, "does not fit well with the orthodox Marxian conception of the class war."¹³ There were many poor Irish Bostonians who favored the execution and many rich conservatives who opposed it. From this study of the social scene Joughin concludes that these reactions to the case underline a basic, persistent conflict within American

12. One of the most famous interchanges involved Mr. Justice (then Professor) Frankfurter and Professor John Wigmore. The bitterness of the controversy can be seen from some of Wigmore's language. He accused his opponent of being "a past master of evasion and insinuation." (quoted P. 261) Wigmore further declared "If the Bar of Massachusetts should take this body-blow lying down, they would deserve to suffer their profession polluted and their bench bolshevized. . . ." (quoted P. 261)

13. P. 371.

society—a constant struggle between those who accept critical evaluation of basic institutions and those who reject such criticism.

Professor Joughin can give personal testimony about the continuing vitality of the conflict and the importance of the Sacco-Vanzetti case as a symbol. While working on the present volume at the University of Texas Professor Joughin sought a research grant involving a small sum. In September, 1944 at the height of the now famous Rainey controversy,¹⁴ the Regents of the University of Texas refused the grant, apparently because the subject matter of the study was distasteful to the Board. Mr. Orville Bullington, one of the Regents, released a statement saying in part "Sacco and Vanzetti will be recalled as two immigrant Communists (*sic*) who were convicted of murder in Massachusetts several years ago and executed. The Board could not see how the study of literature could be advanced, or society benefited by the expenditure of the taxpayer's money on such a study."¹⁵ The impossibility of receiving any cooperation in his work was a principal reason why Professor Joughin left the University of Texas.

Are alleged payroll bandits and murderers entitled to a trial free from reference to their political views and their status as aliens? Are they entitled to trial before an unprejudiced judge and to prosecution without distortion of expert testimony or the suppression of evidence favorable to

14. The principal elements of the Rainey controversy are set forth on page 349 of the Morgan and Joughin book. A more detailed study can be found in SMITH, *THE CONTROVERSY AT THE UNIVERSITY OF TEXAS 1939-1945* (1945). See also DeVoto, *The Easy Chair*, 191 Harpers 134 (Aug. 1945).

15. Smith, *op. cit. supra* note 14, at 11. In the same statement Mr. Bullington exhibits once more his fine disregard for the nice distinctions of left-wing politics by referring to Sacco and Vanzetti as "these two Communist murderers." Speaking of the Joughin research grant President Rainey of the University of Texas reported that "The Board refused this request with some statement as 'Justice Frankfurter has already made martyrs of these two men and there is no reason to study the matter any further.'" *Ibid.*

At least some opinion in Texas has not changed: "We stubbornly remain Texan, and see no useful place in literature for this sort of hysteria brought forth by moments of great public excitements.

"We see no valuable contribution to the world's literature that can come from the publication of this volume." H. N. Graves, Associate Justice, Texas Court of Criminal Appeals, reviewing *THE LEGACY OF SACCO AND VANZETTI* in 27 *TEX. L. REV.* 579, 582 (1949). Professor Joughin makes reference to the Texas episode (P. 350) but does not explicitly connect the occurrence with himself and his book.

their defense? Stated abstractly the central questions posed by the Sacco-Vanzetti trial seem to demand an affirmative answer from every lawyer. Nevertheless, some members of the community—Professor Joughin calls them the forces of undemocratic action—welcome any method of repressing political views and associations which are sharply at variance with the established social order. Undemocratic forces do not rest content with their attempts to define unpopular political action as a new substantive crime. Where the accused are considered dangerous to the public welfare, these elements will countenance successful prosecution for already-established offenses even though proper procedures are disregarded. In times of hysteria the repressors succeed in both ways. It is not through coincidence that Benjamin Gitlow was convicted of advocating criminal anarchy just eighteen months before the Dedham trial of Sacco and Vanzetti.¹⁶

The legacy of Sacco and Vanzetti to the nation is the trial itself: a terrible demonstration of what can occur when the community surrenders to a tyranny of fear.

Hugh M. Davidson†

Monrad G. Paulsen††

A MODERN LAW OF NATIONS. By Philip C. Jessup.* New York: The Macmillan Company, 1948. Pp. ix, 236. \$4.00.

THE INTERNATIONAL PROBLEM OF GOVERNING MANKIND. Two lectures for the Associated Colleges in Claremont, California. By Philip C. Jessup.* Pasadena, The Castle Press, 1947. Pp. ix, 63. \$2.50.

A quarter of a century ago the late Professor E. H. Warren at the Harvard Law School used to greet his first-year Property classes with a statement of this sort: "Gentlemen: If you want to know what the law *was*, you should go to Professor Wambaugh. If you wish to know what the law

16. See *Gitlow v. New York*, 268 U. S. 652 (1925).

† Assistant Professor of French and Assistant Dean of the College, University of Chicago.

†† Assistant Professor of Law, Indiana University.

* Hamilton Fish Professor of International Law and Diplomacy at Columbia University; presently U. S. Delegate to the United Nations with the personal rank of Ambassador.